



PLANNING COMMISSION AGENDA REPORT

VII.2

MEETING DATE: NOVEMBER 24, 2008

ITEM NUMBER:

SUBJECT: APPEAL OF MINOR MODIFICATION MM-08-21
2083 STATE AVENUE

DATE: NOVEMBER 13, 2008

FOR FURTHER INFORMATION CONTACT: WILLA BOUWENS-KILLEEN, AICP
PRINCIPAL PLANNER
(714) 754-5153

DESCRIPTION

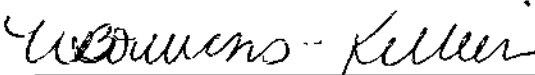
A neighbor has appealed Planning Division's approval of a minor modification to legalize an approximately 10-inch encroachment of a 44-foot long garage into the required 5-foot right side setback.

APPELLANT/APPLICANT

Appellant, Robin Akers, is the neighbor of the applicants, Randal and Debra Ressel.

RECOMMENDATION

Uphold Planning Division's approval of MM-08-21.


WILLA BOUWENS-KILLEEN, AICP
Principal Planner


KIMBERLY BRANDT, AICP
Asst. Development Services Director

BACKGROUND

Property owners Randal and Debra Ressel submitted plans to expand and remodel their existing single-family residence. Improvements include adding an oversized, single car garage and a second-floor master bedroom suite. Since the construction shown on the plans satisfied both City requirements and the Residential Design Guidelines, Planning staff sent notice to abutting neighbors notifying them of the proposed second story construction. No appeals were filed within the one-week time period and building permits were issued on August 8, 2008.

Construction was underway when the adjoining neighbor to the right, appellant Robin Akers, ordered a property line survey which indicated that the right property line was closer to the Ressel's house than originally assumed. A stop work order was issued by the Building Division on October 6, 2008, so the property line issue could be resolved and, if needed, plans revised. The owner had his own survey prepared which showed that the new construction was setback 4.18 feet from the right side property line versus the 5-foot minimum required by Code.

Because of the amount of work that had already occurred, the property owners felt that they would rather apply for the minor modification than move the garage wall back to the 5-foot setback. However, a result of the substandard first floor setback was that the second floor no longer satisfied the City's Residential Design Guidelines. The property owners and their architect worked with Planning staff to modify the plans so the second floor would satisfy the 10-foot average side setback. Based on the revised plans submitted by the Ressels, Planning staff approved the encroachment on October 29, 2008, sending notice to the neighbor. On November 5, 2008, the neighbor filed an appeal of Planning staff's approval.

ANALYSIS

The appellant's points of conflicts and staff's response are as follows:

1. *A copy of the minor modification was not released to the appellant.*
A copy of the single page minor modification approval was given to the appellant in person on October 30, 2008, with a copy sent to her attorney on October 31, 2008.
2. *Impacts of minor modification cannot be evaluated until final construction documents are submitted.*
The minor modification was approved based on revised construction plans submitted to the City on October 29, 2008.
3. *Fire safety will be compromised with the reduced setback.*
The construction will be required to comply with Building Code requirements to ensure fire safety.
4. *The windows in the right side wall of the garage compromise fire safety and provide privacy impacts.*
As stated above, the construction will be required to comply with Building Code requirements to ensure fire safety. As to privacy, the windows are approximately 5.5 feet above the floor of the garage.

5. *Runoff from the roof will spill over the proposed fence onto the appellant's property.*
The construction will be required to comply with Building Code requirements to ensure proper drainage. Additionally, the Ressels have stated that they are willing to install rain gutters and a French drain along this side of the property to ensure drainage remains on their property.
6. *The Ressels had prior knowledge of the minor modification procedure assuming Planning Division's automatic approval of the request.*

and

7. *The Ressels made no effort to communicate or compromise with the neighbors or the City of Costa Mesa. Additionally, the Ressels continue to construct despite the Building Division issuing a stop work order.*
Planning staff has no way of knowing whether the Ressels counted on an automatic approval of the requested minor modification. However, Planning staff's approval of the minor modification for the garage was based on the length of the encroachment (44 feet) versus the overall depth of the lot (139 feet); the relatively small amount of encroachment (10 inches; up to 12 inches can be approved by minor modification); the fact that the windows are placed approximately 5.5 feet above the floor of the garage; and that the second floor could be modified to satisfy the City's Residential Design Guidelines. Staff cannot answer the allegation that the applicants did not work with the neighbor to reach a compromise but has confirmed with the Building inspector that work has continued despite the issuance of a stop work order.

ADDITIONAL DISCUSSION

A detached garage at the rear of the property is unpermitted. Staff is working with the owner to either legalize or remove the structure.

ALTERNATIVES

Planning Commission has the option of:

1. Upholding Planning Division's approval of the minor modification; Commission may modify the approval as desired. This would allow the first floor to remain as is.
2. Reversing the approval, which would require the applicant to move the garage wall in 10 inches.

CONCLUSION

It was Planning staff's opinion that the proposed construction would not adversely impact the neighbor or neighborhood and that compliance with required Building Codes would result in a building that would not impact the neighbor's safety or drainage.

Attachments: 1. Draft Planning Commission Resolution
 2. Exhibit "A" - Draft Findings
 3. Appeal

4. Minor Modification MM-08-21
5. Location Map
6. Plans

Distribution: Deputy City Mgr.-Dev. Svs. Director
Deputy City Attorney
Public Services Director
City Engineer
Fire Protection Analyst
Staff (4)
File (2)

Randal and Debra Ressel
2083 State Avenue
Costa Mesa, CA 92627

Robin Akers
2089 State Avenue
Costa Mesa, CA 92627

RESOLUTION NO. PC-08-

**A RESOLUTION OF THE PLANNING COMMISSION OF
THE CITY OF COSTA MESA UPHOLDING PLANNING
STAFF'S APPROVAL OF MINOR MODIFICATION MM-08-
21**

THE PLANNING COMMISSION OF THE CITY OF COSTA MESA HEREBY
RESOLVES AS FOLLOWS:

WHEREAS, a request to allow the legalization of a 10-inch encroachment into the required 5-foot side setback for the garage of a single-family residence was filed by Randal and Debra Ressel, and was approved by the Planning Division as Minor Modification MM-08-21 on October 29, 2008, with respect to the real property located at 2083 State Avenue in the R1 zone; and

WHEREAS, an adjoining neighbor, Robin Akers, filed an appeal of the approval on November 5, 2008; and

WHEREAS, a public hearing was held by the Planning Commission on November 24, 2008.

BE IT RESOLVED that, based on the evidence in the record and the finding contained in Exhibit "A", the Planning Commission hereby **UPHOLDS** Planning Division's approval of Minor Modification MM-08-21 with respect to the property described above.

BE IT FURTHER RESOLVED that the Costa Mesa Planning Commission does hereby find and determine that adoption of this Resolution is expressly predicated upon the activity as described in the Staff Report for Minor Modification MM-08-21 and upon applicant's compliance with all applicable federal, state, and local laws. Any approval granted by this resolution shall be subject to review, modification or revocation if there is a material change that occurs in the operation, or if the applicant fails to comply with any of the conditions of approval.

PASSED AND ADOPTED this 24th day of November, 2008.

Donn Hall, Chair,
Costa Mesa Planning Commission

EXHIBIT "A"

FINDINGS (APPROVAL)

- A. The information presented substantially complies with Costa Mesa Municipal Code Section 13-29 (6) in that the improvement will not be materially detrimental to the health, safety, and general welfare of persons residing or working within the immediate vicinity of the project or to property and improvements within the neighborhood and the improvements is compatible and enhances the architecture and design of the existing and anticipated development in the vicinity. This includes the site planning, land coverage, landscaping, appearance, scale of structures, open space, and any other applicable features relative to a compatible and attractive development. Specifically, the length of the garage encroachment (44 feet) versus the overall depth of the lot (139 feet); the relatively small amount of encroachment (10 inches; up to 12 inches can be approved by minor modification); the fact that the windows are placed approximately 5.5 feet above the floor of the garage; and that the second floor could be modified to satisfy the City's Residential Design Guidelines.

RESOLUTION NO. PC-08-

**A RESOLUTION OF THE PLANNING COMMISSION OF
THE CITY OF COSTA MESA REVERSING PLANNING
STAFF'S APPROVAL OF MINOR MODIFICATION MM-08-
21**

THE PLANNING COMMISSION OF THE CITY OF COSTA MESA HEREBY
RESOLVES AS FOLLOWS:

WHEREAS, a request to allow the legalization of a 10-inch encroachment into the required 5-foot side setback for the garage of a single-family residence was filed by Randal and Debra Ressel, and was approved by the Planning Division as Minor Modification MM-08-21 on October 29, 2008, with respect to the real property located at 2083 State Avenue in the R1 zone; and

WHEREAS, an adjoining neighbor, Robin Akers, filed an appeal of the approval on November 5, 2008; and

WHEREAS, a public hearing was held by the Planning Commission on November 24, 2008.

BE IT RESOLVED that, based on the evidence in the record and the findings contained in Exhibit "A", the Planning Commission hereby **REVERSES** Planning Division's approval of Minor Modification MM-08-21 with respect to the property described above.

PASSED AND ADOPTED this 24th day of November 2008.

Donn Hall, Chair,
Costa Mesa Planning Commission

EXHIBIT "A"

FINDINGS (DENIAL)

- A. The information presented substantially does not comply with Costa Mesa Municipal Code Section 13-29 (6) in that the improvement will be materially detrimental to the health, safety, and general welfare of persons residing or working within the immediate vicinity of the project or to property and improvements within the neighborhood and the improvements are not compatible and do not enhance the architecture and design of the existing and anticipated development in the vicinity. This includes the site planning, land coverage, landscaping, appearance, scale of structures, open space, and any other applicable features relative to a compatible and attractive development.



City of Costa Mesa

- ☐ Appeal of Planning Commission Decision
☐ Appeal of Zoning Administrator/Staff Decision

APPLICATION FOR APPEAL, REHEARING, OR REVIEW

Applicant Name* ROBIN AKERS
Address 2089 STATE AVE, COSTA MESA, CA
Phone _____ Representing _____

REQUEST FOR: ☐ REHEARING ☒ APPEAL ☐ REVIEW**

Decision of which appeal, rehearing, or review is requested: (give application number, if applicable, and the date of the decision, if known.)

MM-08-21 MINOR MODIFICATION
OCTOBER 28, 2008

Decision by: WILLA BOUWENS-KILLEN, AICP
Reasons for requesting appeal, rehearing, or review:

SEE ATTACHED APPEAL DATED NOV. 5, 2008

Date: NOV 5, 2008

Signature: [Signature]

*If you are serving as the agent for another person, please identify the person you represent and provide proof of authorization.

**Review may be requested only by Planning Commission, Planning Commission Member, City Council, or City Council Member

For office use only – do not write below this line

SCHEDULED FOR THE CITY COUNCIL/PLANNING COMMISSION MEETING OF:

If appeal, rehearing, or review is for a person or body other than City Council/Planning Commission, date of hearing of appeal, rehearing, or review:

Ms. Robin Akers
2089 State Av.
Costa Mesa, CA 92627

City of Costa Mesa
Planning Department
Attention: Willa Bouwens-Killeen

Re: Appeal of Minor Modification at 2083 State Av. Costa Mesa
Reasons for Appeal of MM-08-21
November 5, 2008

The minor modification (MM-08-21) approval needs further review. Since a copy of the approval was not released to me, I do not comprehend the conditions of the approval. It is my understanding that the approval is solely based on information from Mr. Ressel and a revised site plan which has not been through plan check or design review. In order to protect my property investment and perform my civic responsibility, I am respectfully submitting an appeal to Minor Modification MM-08-21, October 28, 2008. Until final construction documents are developed, there is no way to evaluate what the impacts of the "minor" modifications are and how they affect my property. My hope is that enforcement of Planning and Building Department requirements and codes will be followed and adhered to, which I do not believe has been the case up to this point.

1. It appears there are three areas affected by the issuance of this modification:

A. Fire Safety: The finished wall surfaces between parties will be less than 4 feet apart and the 18 inch eaves will require special fire protection to allow buildings so close. Please note this distance is between a huge garage (U-occupancy) with a second story master suite and that of my house, a single story residence. Will parapets be needed by code or the eaves reduced or enclosed? What will the roof need to be? What are the aesthetics of these changes?

Will the windows on the first floor be removed considering my gas meter and lines are at the closest point? Will the second floor windows be adjusted as well? Maximum allowable garage area is 700 sq. ft. C.M.C. Sec. 13-85. It appears the garage area is approximately 44' x 20' = 880 sq. ft. and not allowable unless authorized by a minor conditional use permit. Will this permit also be issued?

B. Windows: Not only do the windows pose a fire hazard now they also impose upon my privacy especially the garage windows. I am requesting they be removed so that they do not align with my entrance door (with windows) and with my Master Bedroom and Bathroom window openings.

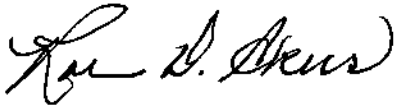
C. Drainage: Runoff from the neighbor's roof will spill over the proposed fence and onto my property. Without containment moisture and mold will accumulate on my side of the property line, causing a potential health problem. I recommend that in view of the fact that the owner has constructed his addition closer to our property line than the City allows that he provide roof edge rain gutters. Also, because surface flow already naturally flows onto my property on the sides and front of our residences, the neighbor should be required to install "Area Drain" type drainage through leaders that will exit through the front curb to the gutter.

Ms. Robin Akers
2089 State Av.
Costa Mesa, CA 92627

2. It is believed that the Owner had prior knowledge of the twenty percent automatic approval that Planning would permit for deviation from sideyard setback requirements, consequently building to that assumed deviation and then surpassing it.

3. It appears that there was no effort on the Owner's part to communicate compromise or negotiate with neighbors or the City of Costa Mesa in reaching an amiable solution to these issues. Furthermore, the Owner, upon receiving a Notice to Stop Construction, has installed electrical, mechanical, plumbing, inside wood framing, doors, windows, and hardware in preparation to completing the construction even through today.

I am the adjacent property owner. It is my hope that you will consider these concerns and enforce appropriate guidelines and codes that will be for the good of the City, the neighborhood and will be fair to me.

A handwritten signature in cursive script, appearing to read "Robin Akers", written in black ink.

Ms. Robin Akers

MINOR MODIFICATION

Reference No.:
Status: APPROVED
Applied Date: 10-29-2008
Approved Date: 10/29/2008
Denied Date:

MINOR MODIFICATION NO.: MM-08-21
Project Address: 2083 STATE AV
Suite:

Parcel Number: 42247309

Project Applicant: RESSEL, RANDAL

PROPOSED MINOR MODIFICATION: MINOR MODIFICATION TO ALLOW A 4.18' FIRST FLOOR, RIGHT SIDE SETBACK FOR THE GARAGE TO ENCROACH 0.82' INTO THE REQUIRED 5' SIDE SETBACK (LENGTH OF GARAGE IS 44'). SECOND FLOOR WILL AVERAGE 10' RIGHT SIDE SETBACK AS REQUIRED BY RESIDENTIAL DESIGN GUIDELINES.

PROPERTY LINE SURVEY RECEIVED 10.28.09, CONFIRMING LOCATION OF CONSTRUCTION.

REQUIRED FINDINGS:	Y	The improvement will not be materially detrimental to the health, safety and general welfare of persons residing or working within the immediate vicinity of the project or to property and improvements within the neighborhood.
	Y	The improvement is compatible and enhances the architecture and design of the existing and anticipated development in the vicinity. This includes the site planning, land coverage, landscaping, appearance, scale of structures, open space and any other applicable features relative to a compatible and attractive development.

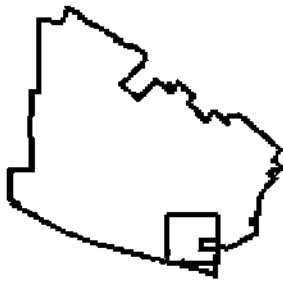
PROJECT PLANNER: BOUWE_W

NOTES:

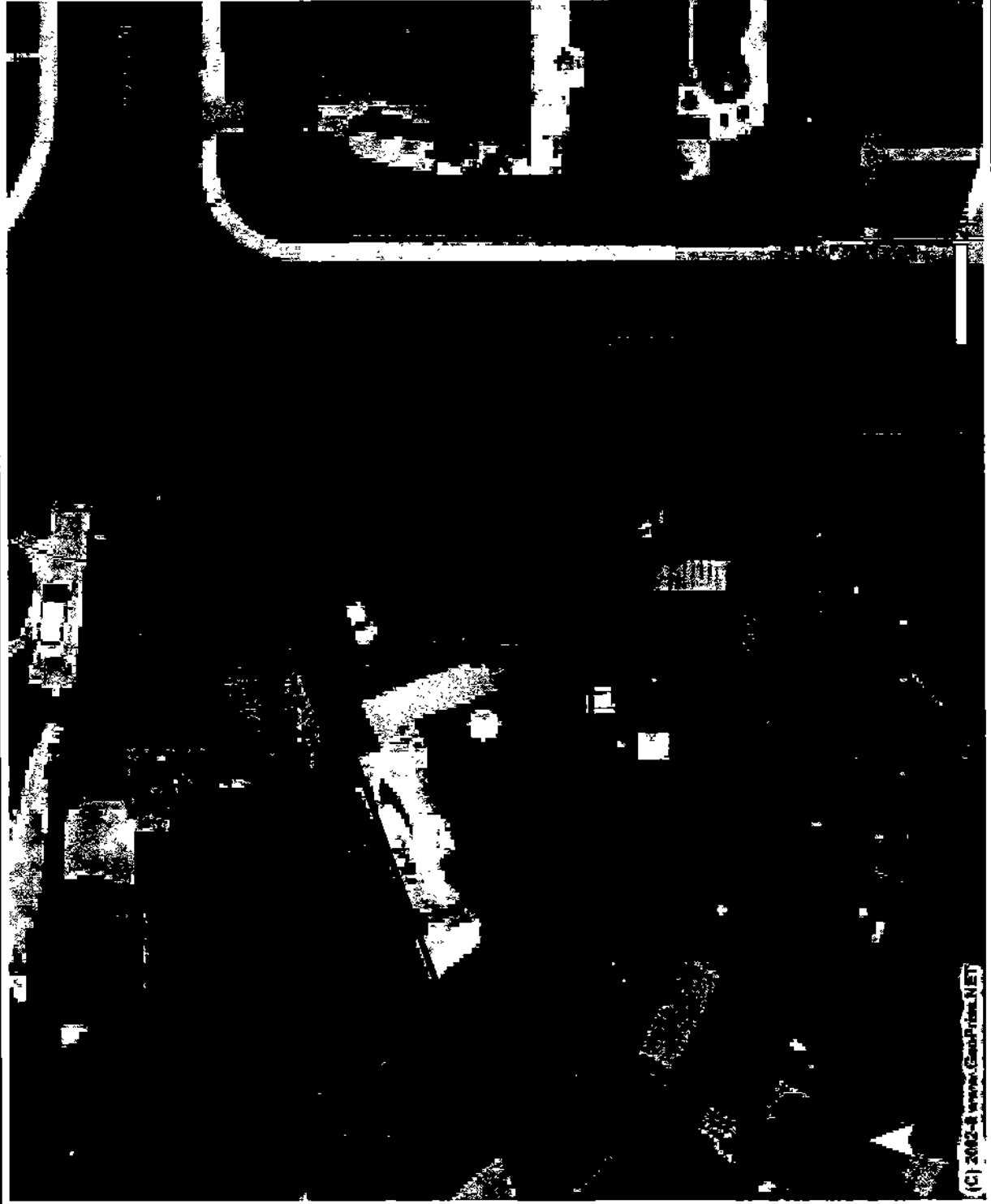
City of Costa Mesa

CITY OF COSTA MESA - [Created: 11/13/2008 9:54:50 AM] [Scale: 50.82] [Page: 8.5 x 11 / Landscape]

Overview Map



Map Display

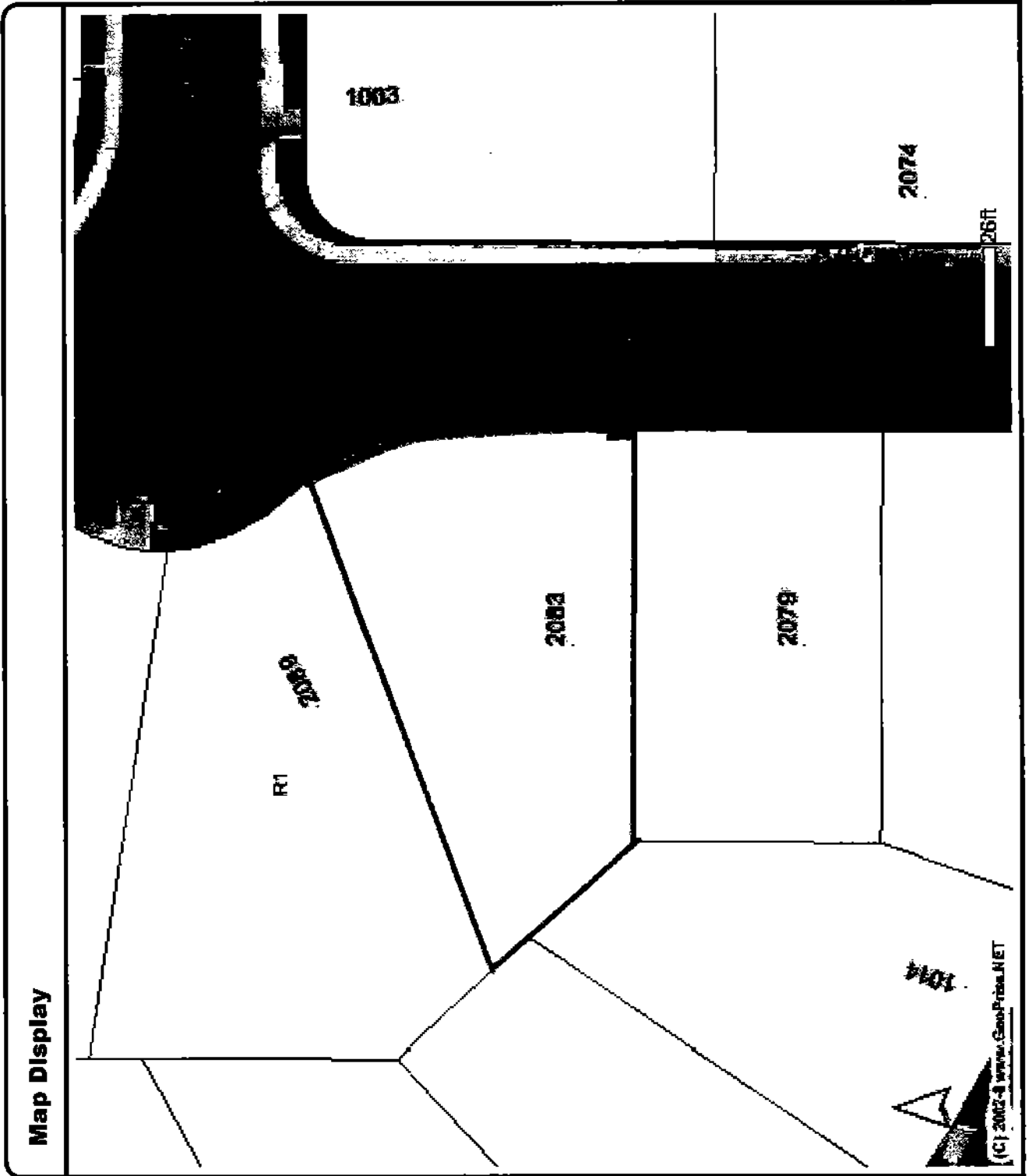
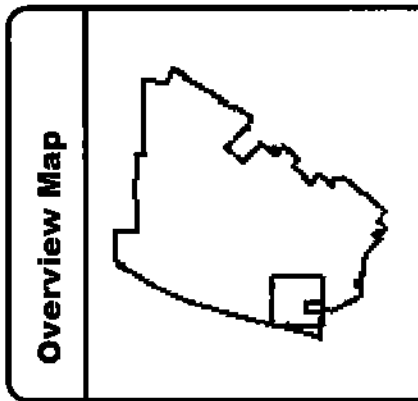


Legend

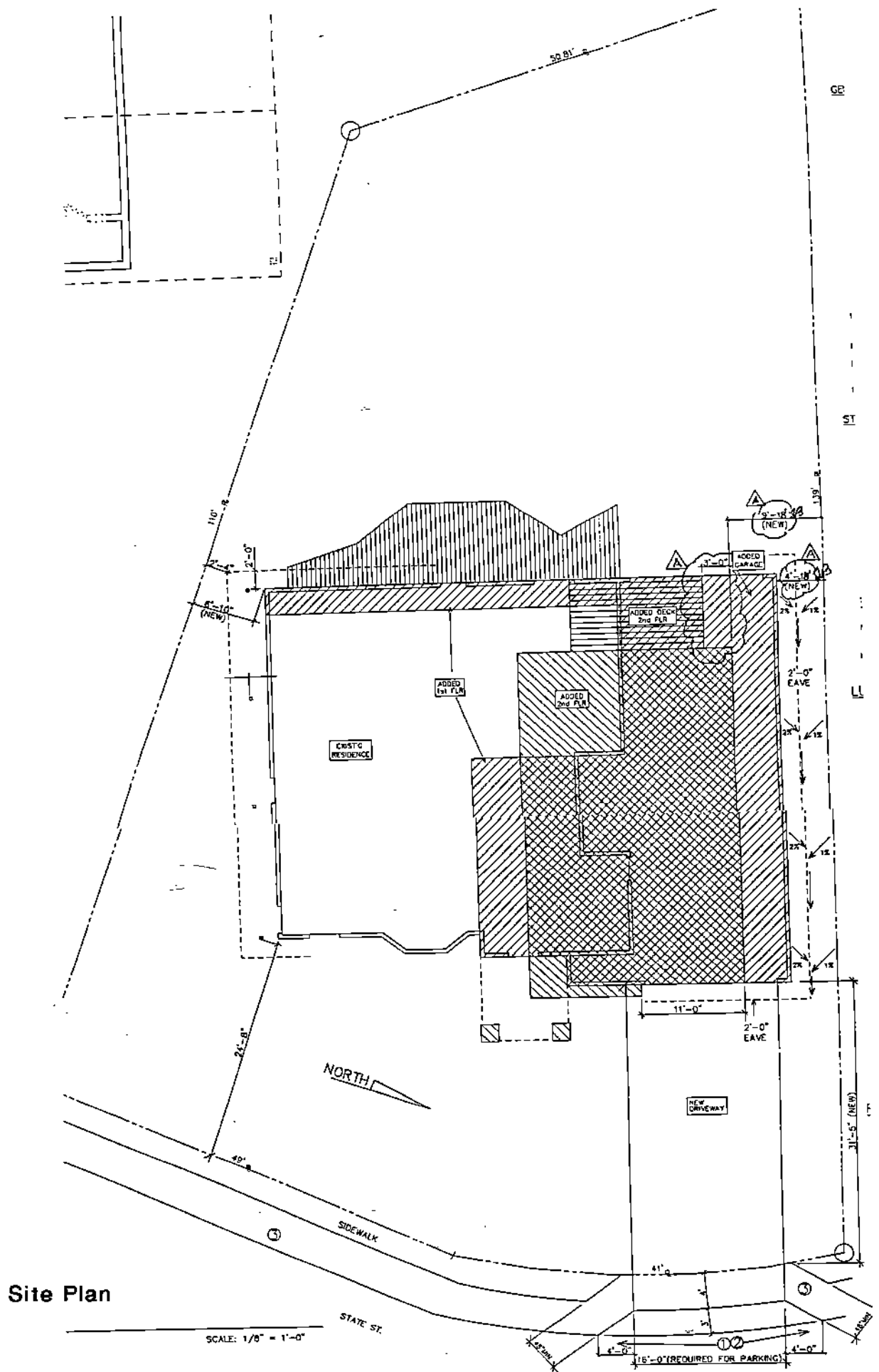
Address Large	Primary	Secondary	Waterway	Hydrology	Channel	Street
Address Points	Waterway Lines	Waterway	Channel	Channel	Channel	Names
Freeway	Freeway	Freeway	Freeway	Freeway	Freeway	Freeway
Roads	Roads	Roads	Roads	Roads	Roads	Roads
Collector	Collector	Collector	Collector	Collector	Collector	Collector
Major	Major	Major	Major	Major	Major	Major
Newport Blvd (cont)	Newport Blvd (cont)	Newport Blvd (cont)	Newport Blvd (cont)	Newport Blvd (cont)	Newport Blvd (cont)	Newport Blvd (cont)

City of Costa Mesa

CITY OF COSTA MESA - [Created: 11/13/2008 9:55:58 AM] [Scale: 50.82] [Page: 8.5 x 11 / Landscape]



Legend	
Address Large	Primary
Address Points	SECONDARY
Freeway	Waterway
Roads	Lines
Collector	Hydrology
Freeway	Channels
Major	Street Names
Neighborhood	
BLVD (cont)	

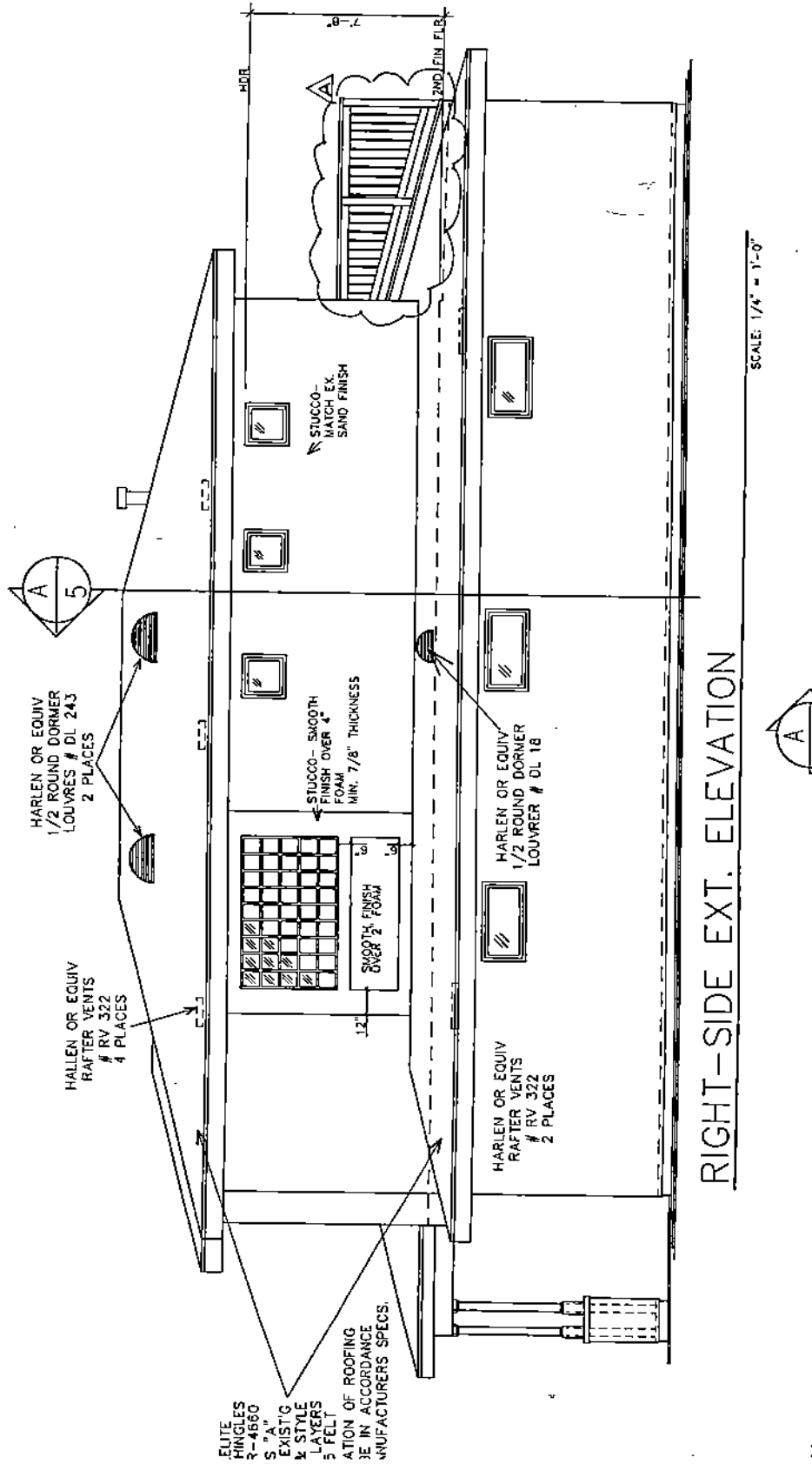


REVISIONS

REVISIONS
A 10/29/00

LEN BEKEMEYER & ASSOCIATES

RESIDENTIAL & COMMERCIAL DESIGN
2970 HARBOUR BLVD. SUITE 203
COSTA MESA, CA 92626



VII.2
MM-08-21

From: BOUWENS-KILLEEN, WILLA
Sent: Thursday, November 13, 2008 11:09 AM
To: 'Debra Huse Ressel'
Subject: RE: a few more questions

Debra,

Planning staff prepares a report discussing the background of the project, addressing issues raised in the appeal, and making a recommendation to Commission. Generally, the same planner makes a verbal presentation to Planning Commission at their meeting and is available to answer any questions. Both you and Robin have been listed as "cc's" and copies of the reports will be sent out either today or tomorrow. Unfortunately, there is no way to guess what Planning Commission will do – it varies on a case-by-case basis. Lastly, Planning Commission contains 5 members who are appointed by the City Council. They are responsible for reviewing CUPs, variances, conceptual projects, etc. I've attached a list that includes their names and contact phone numbers.

Let me know if there's anything else. Willa

From: Debra Huse Ressel [mailto:debrahuse@mac.com]
Sent: Thursday, November 13, 2008 8:26 AM
To: BOUWENS-KILLEEN, WILLA
Subject: a few more questions

Willa, can you tell me how the appeal is presented?
Who prepares the staff report and presents it?
Can we have a copy of this report before the hearing?
Also how have judgements similar to this gone before? Is there a way to look at other cases?
Finally who and what is the Planning Commission?
Thanks for your time, Debra

Debra Huse Ressel
debrahuse@mac.com

11/13/2008